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Case No. **11 3149**

# CLASS ACTION COMPLAINT

*Defendants.*

## CLASS ACTION COMPLAINT

1 deceptively marketing to and billing consumers for unauthorized charges relating to  
 2 BidRack's Internet-based "penny auction" website. Plaintiff, for her Complaint, alleges as  
 3 follows upon personal knowledge as to herself and her own acts and experiences and, as to  
 4 all other matters, upon information and belief, including investigation conducted by her  
 5 attorneys.

### 6 PARTIES

7 1. Plaintiff Verna Parino is a natural person and citizen of the State of California.

8 2. Defendant BidRack Inc. is the owner and operator of an online "penny  
 9 auction" located at www.bidrack.com. BidRack Inc. is a corporation incorporated and  
 10 existing under the laws of the State of Delaware, with its principal place of business located  
 11 in Vancouver, Canada. BidRack does business throughout the United States, the State of  
 12 California, and this District.

13 3. John Doe Defendant is an online advertising network that directly participates  
 14 in the acts and practices alleged herein. John Doe Defendant, through the use of deceptive  
 15 and fraudulent sponsored links, online pages, and other advertisements, partners with  
 16 BidRack to drive consumers to the landing pages of BidRack.com, and profits from each  
 17 Bidrack.com registration conversion. On information and belief, John Doe Defendant may  
 18 include, but is not limited to, Coleadium Inc. (Ads4Dough), CPA Staxx, Inc., Prominent  
 19 Leads, LLC, and/or EWA Network Inc. Defendant BidRack is in possession of the identity  
 20 of John Doe Defendant.

### 21 JURISDICTION AND VENUE

22 4. The Court has subject matter jurisdiction over this action pursuant to 28  
 23 U.S.C. § 1332(d), because (a) at least one member of the putative class is a citizen of a state  
 24 different from Defendants, (b) the amount in controversy exceeds \$5,000,000, exclusive of  
 25 interest and costs, and (c) none of the exceptions under that subsection apply to this action.

5. Venue is proper in this District under 28 U.S.C. § 1391(a) as Plaintiff resides in this District and the injury arose here. Venue is additionally proper because Defendants transact significant business in this District, including soliciting consumer business, and entering into consumer transactions.

#### FACTS COMMON TO ALL COUNTS

6. In recent years, the Internet has seen a proliferation of “penny auction” sites like BidRack.com whereby consumers can purchase bids in the hopes of “winning” at auction a valuable item at a highly discounted price. Consumers reach these sites from sponsored links, fake news articles and blogs, and other types of paid advertisements. Initial representations often advertise that “bids” can cost as little as a few cents, and allegedly show the numerous items that are available to win at incredibly discounted prices.

7. Once a consumer reaches the actual homepage of the auction site, they are further bombarded with advertisements and other representations urging them to register for “free.”

8. However, Defendants fail to conspicuously disclose, and in fact, actively disguise the actual cost of registration and membership. Namely, Defendants disclose that consumers who register on the site do not affirmatively choose or know that they are being charged for an initial “bid pack.”

9. Consumers are primarily routed to the BidRack.com homepage through a series of sponsored advertisements and fake news stories. Advertisements appearing in numerous places across the web include:

Get a 3G Wi-fi Kindle for \$21.93. Limit One Per Day. Grab Yours Now.

BidRack.com Official Site  
Today Only: Online auction site to give away 1,000 Kindles for \$21.93!  
[www.bidrack.com/AmazonKindle](http://www.bidrack.com/AmazonKindle)

Chicago: Online auction website is selling over

1,000 new apple iPads for \$24.19 each!

Overstock Kindle: \$21.93  
Get a 3G Wi-Fi Kindle for \$21.93. Limit One Per Day. Grab Yours  
Now.  
[www.bidrack.com/AmazonKindle](http://www.bidrack.com/AmazonKindle)

BidRack- 98% Off Retail. iPads-\$25.71 & LED TVs- \$69.38.

BidRack Ranked #1 in US  
Fewer Bidders. Better Deals.  
iPads for \$29.21 & LED TVs for \$47.  
[www.bidrack.com](http://www.bidrack.com)

SHOCKING: 52 Samsung HDTV for \$74.07  
TODAY ONLY: Auction site to give away 1,000 52 Samsung  
HDTVs for \$74.07!  
[Channel4.com/Shocking-Deals](http://Channel4.com/Shocking-Deals)

Overstock Kindle: \$21.93 Special Offer for Returning Users. Get  
a 3G Wi-fi Kindle for \$21.93.  
[www.BidRack.com/AmazonKindle](http://www.BidRack.com/AmazonKindle)

10. These advertisements overtly misrepresent the services and products offered  
by BidRack.

11. Likewise, Defendants' advertisements represent that products are available for  
a fixed price, while in reality, the prices wildly fluctuate from auction to auction.

12. Fake news articles include "Channel 9 News," which reports on the "massive  
money savings trick" for surplus auctions in a "special report," and similarly, "Channel 7  
Reports" exposes "How Smart Shoppers are Getting 98% Discounts on Brand New  
Merchandise." Other pages contain supposed "consumer reviews," with pictures of alleged  
BidRack members who relate their positive experiences with the site, such as:

"Hi, my name is Samantha and I won a pocketbook from BidRack...I  
really enjoy your products"

"My name is Lauren...and I won these shoes from BidRack for only 9  
cents!"

"Hi! My name is Robin and I'm from Iowa and I won this beautiful  
ring on BidRack for only 8 cents...THANKS!"

1 "thank-you BidRack! I received my iPad yesterday in the mail and I  
2 was very stoked about it. Thank-you so much for your amazing deals  
3 and I can't wait to start doing more business with you!"

4 13. These reviews are not from actual BidRack customers, but are complete  
5 fabrications designed to induce consumers to proffer payment to BidRack.

6 14. In another example, the "WallStreet Lifestyle Journal" claimed to promote a  
7 story written by its "Consumer Trend Investigator," who determined "[a]fter hours and hours  
8 of research I came to the conclusion that BidRack was best because of its wide variety of  
9 products and BBB rating."

10 15. Unbeknownst to the consumer, these "news" pages and "special reports,"  
11 orchestrated in concert with John Doe Defendant, are nothing more than sponsored  
12 advertisements containing fraudulent misrepresentations. The supposed satisfied customers  
13 displayed on these pages are unsuspecting individuals who have had their pictures  
14 misappropriated without their knowledge or consent, and their success stories mere  
15 inventions by Defendants aiming to deceive consumers.<sup>1</sup> Many of these fake "news reports"  
16 use the exact same pictures of overloaded warehouses and "satisfied" customers.

17 16. Consumers are also driven to Defendant's website by fraudulent postings on  
18 Craigslist.org, a popular online classifieds website. In conjunction with John Doe  
19 Defendants, phony craigslist sellers create postings that advertise popular items for incredibly  
20 low prices, and then respond to consumers who are interested in these postings with e-mails  
21 stating that the item has already been sold but that the inquiring consumer should check out  
22 Bidrack.com where the seller "picked up 2 brand new ones for under \$70."

23 17. All of these fraudulent advertisements exist solely for one purpose—to drive  
24 unsuspecting consumers to Defendant BidRack.com's auction website, and specifically make  
25 them believe that they can register for free and buy items for little more than pennies.

26 <sup>1</sup> BidRack.com's practice of using fabricated consumer testimonials is further described at:  
27 <http://www.pennyauctionwatch.com/2011/02/bidrack-com-penny-auction-testimonials/>

1           18.     Upon reaching Defendant's website, consumers are bombarded with  
2 representations showing the latest unbelievable products that members have "won" at  
3 auction, such as iPhones, purses, and laptops, as well as "live" auctions that are currently  
4 taking place. Live auctions are displayed with timers that count down the seconds until the  
5 auction is over, pressuring consumers to act quickly to get the good deal. However,  
6 disguised below in small gray font is a statement that "auctions shown above are a simulation  
7 of how real auctions may appear." Therefore, these auctions are not real but rather a ploy to  
8 rush consumers to fill out the registration and credit card page.

9           19.     The BidRack homepage also heavily emphasizes that registration is  
10 "completely FREE!" The word "free" is repeated numerous times across the website in  
11 tandem with the call to register.

12           20.     The trademarks of several reputable news organizations, such as the New  
13 York Times, BBC, Wired Magazine, and CBS are displayed at the bottom of the page in an  
14 effort to further legitimize the site. The logos are accompanied by quotes from the New York  
15 Times ("the auctions are fun and challenging while offering the potential of a killer deal")  
16 and BBC ("successful bidders can win anything from a television to a car, or cash sum, for a  
17 fraction of its real cost") that have never actually been written about BidRack.com and  
18 BidRack does not have permission or license to utilize the trademarks to promote its  
19 products.

20           21.     Additionally, BidRack.com's homepage includes a highly edited selection of  
21 news clips talking about purchasing discount consumer items through auctions; in order to  
22 make consumers believe that these very short clips are about BidRack, the video appears  
23 under the heading: "Bidrack changes the way you shop." In contrast to Defendant's  
24 representations, all the statements made in the video are unrelated to BidRack.com.

25           22.     BidRack.com additionally represents "Our prices are so good because we buy  
26 many of our products from overstock surpluses and warehouse closeouts." This statement is  
27

1 false because BidRack in no way gets its products in this manner. On information and belief,  
2 BidRack is not even in possession of many of the items it sells at the time the products are  
3 auctioned. Likewise, according to hundreds of consumer complaints, Defendant BidRack is  
4 statistically less likely to ever ship expensive items such as TVs or iPads than cheaper items  
5 like a giftcard.<sup>2</sup>

6 23. BidRack guarantees "BidRack Prizes Are Always Shipped Within 72 Hours."  
7 This statement is also false in that BidRack regularly fails to ship items within 72 hours, and  
8 regularly fails to ship any item at all.

9 24. Consumers who have been enticed to complete the "free" registration are then  
10 immediately directed to another BidRack landing page that states "STEP 2 OF 2:  
11 Congratulations, final step! Scroll down to finish registering." After scrolling down the page,  
12 past a cluttered assortment of boxes, graphs, arrows, bright colors, charts, logos, and  
13 numbers, consumers are directed to enter their shipping address and credit card information  
14 into a box to pay for items, shipping, or bids when they choose to buy them. After entering  
15 their information, consumers are instructed to click on a button labeled "START  
16 WINNING."

17 25. At no point in time are consumers directed to accept or read any Terms and  
18 Conditions, or to check any box to indicate acceptance of any purchase or charge.  
19 Consumers reasonably believe that they have not completed the purchase of any bid pack at  
20 all, but only provided a credit card for the purpose of registration.

21 26. In fact, it is only after consumers notice the \$60 to \$99 charge on their credit  
22 or bankcard billing statement that most realize they have been charged at all.

23  
24  
25 <sup>2</sup> See the following consumer comments and complaints against BidRack at:

26 <http://www.pennyauctionwatch.com/2011/02/bidrack-com-penny-auction-testimonials/>  
27 <http://www.facebook.com/pages/No-More-Nomorerack-Bidrack/211851815491679?sk=wall>



1           27. Defendant BidRack.com knowingly and purposefully designed its website to  
2 mislead and deceive consumers in this exact manner. In fact, in less than two months of  
3 operation, the Delaware Better Business ("BBB") has already received more than 220  
4 complaints from consumers regarding BidRack.com's hidden charges, leading the BBB to  
5 issue a press release warning consumers against using the site.

6           28. The BBB press release states that "[c]onsumers have reported to us that when  
7 they sign up for the BidRack service, they are under the understanding that it is "Free".  
8 However, upon registration, their credit card is then charged a fee, often around \$99."<sup>3</sup>

9           29. Defendant BidRack.com and John Doe Defendant purposefully designed  
10 marketing materials that drive consumers to BidRack.com and the BidRack.com website to  
11 confuse and mislead consumers into inadvertently submitting their payment information.  
12 Defendants also utilize fraudulent and misleading advertisements and endorsements to  
13 deceive consumers into believing that BidRack.com is a legitimate site that has been featured  
14 on reputable news sources.

15           30. On information and belief, BidRack participates and bids in its own auctions,  
16 a practice known as shill bidding, thereby inflating the number of bids required to win the  
17 auction. This results in consumers overpaying for items won through auctions. Defendant  
18 utilizes computer programs commonly known as "bots" that appear to be real consumers to  
19 bid in auctions and drive up the winning price, or, so that the "bot" will win the auction  
20 outright after extensive bidding by consumers, thereby eliminating the necessity to ship a  
21 product to a consumer but still profit from bids. Consumers report a complete and total  
22 inability to win auctions on high priced auctions such as computers and iPads, while they  
23 experience little if any problem winning auctions to buy bid packs. Likewise, consumers  
24 report seeing the same usernames repeatedly and regularly winning high priced auctions.

25           **FACTS RELATING TO PLAINTIFF VERA PARINO**

26 \_\_\_\_\_  
27 <sup>3</sup> <http://delaware.bbb.org/article/bbb-of-delaware-warns-of-penny-auction-bidrack-27800>



1           31. In or around May 20, 2011, Plaintiff Verna Parino arrived at BidRack.com  
2 after clicking on and being directed through a paid advertisement.

3           32. Upon reaching BidRack.com, Plaintiff viewed and relied on the video of news  
4 programs and reasonably believed it was clips of news stories about BidRack.com. Plaintiff  
5 relied on this video in believing BidRack.com was safe to register with for free.

6           33. Plaintiff additionally viewed and relied on the alleged endorsements of  
7 BidRack.com that appeared next to logos for organizations such as the New York Times and  
8 BBC. Plaintiff relied on these endorsements in believing BidRack.com was safe to register  
9 with for free.

10           34. Due to numerous representations on the site, Plaintiff was led to believe that  
11 she would be able to access the site after registering an account for "free." However,  
12 unbeknownst to Plaintiff, access to Defendant's site was not free, and she was charged \$99  
13 immediately after entering her billing information. Plaintiff did not see any disclosures that  
14 she would be charged upon entering her credit card information. She took no affirmative  
15 action and had no intent to purchase a bid pack during the registration process.

16           35. Immediately after noticing that her account had been charged \$99, Plaintiff  
17 contacted BidRack.com customer service to dispute the charge and request a refund of the  
18 unauthorized charge. BidRack.com refused to issue Plaintiff a refund.

19           36. Plaintiff also contacted her credit card company to dispute the unauthorized  
20 charges, but the company was unable to issue her a refund.

21           37. Plaintiff has yet to receive a refund of any of the monies wrongfully obtained  
22 by Defendant BidRack.com.

### 23                           CLASS ALLEGATIONS

24           38. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure  
25 23(b)(2) and Rule 23(b)(3) on behalf of herself and a Class and two SubClasses defined as  
26 follows:

27           **BidRack Class:** All United States residents who were charged for a bid pack during  
28 the BidRack.com registration process by Defendant BidRack, Inc.

**BidRack California SubClass:** All California residents who were charged for a bid pack during the BidRack.com registration process by Defendant BidRack, Inc.

**John Doe Defendant SubClass:** All United States residents who were directed to a BidRack.com landing page by John Doe Defendant's and were charged for a bid pack during the BidRack.com registration process by Defendant BidRack, Inc.

The following persons are excluded from the Class and SubClasses: 1) any Judge or Magistrate presiding over this action and members of their families; 2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former employees, officers and directors; 3) persons who properly execute and file a timely request for exclusion from the class; and 4) the legal representatives, successors or assigns of any such excluded persons.

39. Hereinafter, the above-described Class and SubClasses may be referred to collectively as the "Classes."

40. **Numerosity:** The exact number of the members of the Classes is unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable. Defendants have deceived tens of thousands of consumers who fall into the definitions set forth above. Members of the Class and SubClasses can be identified through Defendants' records.

41. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Classes, as Plaintiff and other members sustained damages arising out of the wrongful conduct of Defendants, based upon the same transactions which were made uniformly with Plaintiff and the public.

42. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Classes, and have retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interest antagonistic to those of the Class and SubClasses, and Defendants have no defenses unique to Plaintiff.

1           **43. Predominance and Superiority:** Class proceedings are superior to all other  
 2 available methods for the fair and efficient adjudication of this controversy, as joinder of all  
 3 members is impracticable. The damages suffered by the individual members of the Class and  
 4 SubClasses will likely be relatively small, especially given the burden and expense of  
 5 individual prosecution of the complex litigation necessitated by Defendants' actions. It  
 6 would be virtually impossible for the members of the Class and SubClasses to obtain  
 7 effective relief from Defendants' misconduct on an individual basis. Even if members of the  
 8 Class and SubClasses themselves could sustain such individual litigation, it would not be  
 9 preferable to a class action, because individual litigation would increase the delay and  
 10 expense to all parties due to the complex legal and factual controversies presented in this  
 11 Complaint. By contrast, a class action presents far fewer management difficulties and  
 12 provides the benefits of single adjudication, economy of scale, and comprehensive  
 13 supervision by a single court. Economies of time, effort, and expense will be fostered and  
 14 uniformity of decisions will be ensured.

15           **44. Commonality:** There are many questions of law and fact common to the  
 16 claims of Plaintiff and the Classes, and those questions predominate over any questions that  
 17 may affect individual members of the Classes. Common questions for the Classes include,  
 18 but are not limited to the following:

- 19           (a) Whether Defendants' conduct alleged herein constitutes violations of  
 20 Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- 21           (b) Whether Defendants' conduct alleged herein constitutes violations of  
 22 Cal. Civ. Code §§ 1750, *et seq.*;
- 23           (c) Whether Defendants' conduct alleged herein constitutes violations of  
 24 Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
- 25           (d) Whether Defendants' conduct alleged herein constitutes fraud in the  
 26 inducement;
- 27           (e) Whether Defendants' conduct alleged herein constitutes conspiracy to  
 28 commit fraud in the inducement;

(f) Whether Defendants' conduct alleged herein constitutes breach of contract; and

(g) Whether Defendants' conduct alleged herein constitutes unjust enrichment.

# COUNT I

## Violation of California's False Advertising Law Cal. Bus. & Prof. Code §§ 17500, *et seq.* (On Behalf of Plaintiff and the Classes)

45. Plaintiff incorporates by reference the foregoing allegations.

46. It is unlawful for a corporation to knowingly make, by means of any advertising device or otherwise, any untrue or misleading statement with the intent to sell a product or service, or to induce the public to purchase a product or service. Any statement in advertising that is likely to deceive members of the public constitutes false and misleading advertising under Cal. Bus. & Prof. Code §§ 17500, *et seq.*

47. As alleged herein, both Defendants have disseminated, and continue to disseminate, advertising that they know or should reasonably know is false and misleading. This conduct includes, but it is not limited to, promoting and advertising online auctions for products without disclosing the actual price to participate, a material term of the transaction. Defendants actively misrepresent and conceal the actual price(s) consumers are charged when they submit their credit card information.

48. Defendants also falsely represent their affiliation with various news outlets, such as the New York Times, CBS, and BBC, and provide fraudulent "quotations" from news articles that supposedly have appeared on such outlets. These false representations act to enhance the apparent legitimacy of the site, thereby inducing consumers to purchase products or services from Defendant BidRack.

49. Defendants also falsely advertise through the use of fake "consumer reviews" from users of the BidRack.com website. Although these "reviews" are represented as coming from real-life users of the site, they are actually created by Defendants as part of their

1 marketing and advertising scheme. These untrue statements induce consumers into  
 2 purchasing products or services from Defendant BidRack by falsely suggesting that  
 3 consumers will have an experience similar to the satisfied "consumers" who provide such  
 4 "reviews."

5 50. By committing the acts alleged in this Complaint, Defendants have knowingly  
 6 disseminated untrue and/or misleading statements through online advertising in order to sell  
 7 products and services on BidRack's online auctions, in violation of the proscriptions of Cal.  
 8 Bus. & Prof. Code § 17500.

9 51. Plaintiff and members of the Classes were all charged monies beyond what  
 10 they authorized. Accordingly, Plaintiff and members of the Classes have suffered injury in  
 11 fact and lost money as a result of Defendants' acts of false advertising.

12 52. Plaintiff seeks an order requiring Defendants to (1) immediately cease the  
 13 unlawful practices stated in this Complaint; (2) make full restitution of all funds wrongfully  
 14 obtained; and (3) pay interest, attorneys' fees, and costs pursuant to Cal. Code Civ. Proc. §  
 15 1021.5.

16 **COUNT II**  
 17 **Violation of the Consumers Legal Remedies Act**  
**Cal. Civ. Code §§ 1750, *et seq.***  
 18 **(On Behalf of Plaintiff and the Classes)**

19 53. Plaintiff incorporates by reference the foregoing allegations.

20 54. The Consumers Legal Remedies Act prohibits the act, use or employment by  
 21 any person of any deception, fraud, false pretense, false promise, misrepresentation,  
 22 concealment, suppression or omission of any material fact with intent that others rely upon  
 23 such act in connection with the sale or advertisement of any merchandise whether or not any  
 24 person has in fact been misled, deceived or damaged thereby.

25 55. As alleged herein, Defendants have engaged in deceptive practices, unlawful  
 26 methods of competition, and/or unfair acts as defined by Cal. Civ. Code §§ 1750, *et seq.*, to  
 27 the detriment of Plaintiff and the Classes.

1           56. Defendants utilize false and deceptive advertising that both conceals the actual  
2 price of the product and widely and willfully misrepresents testimonial support for the  
3 product offered.

4           57. Defendant BidRack's offers contain unconscionable terms in that they are  
5 unfair and inequitable and the material terms of the offers are hidden and actively  
6 misrepresented by Defendants.

7           58. Defendants, acting with knowledge, intentionally and unlawfully brought  
8 harm upon Plaintiff and the Classes by deceptively inducing Plaintiff and the members of the  
9 Classes to purchase a product by using deceptive and misleading advertisements that fail to  
10 clearly and conspicuously disclose the price of the goods and services and by thereafter  
11 placing unauthorized charges on their credit and bank card accounts. Specifically,  
12 Defendants violated Cal. Civ. Code § 1750 in at least the following respects:

13           (a) In violation of § 1770(a)(2) by using false testimonials to misrepresent  
14 the source, sponsorship, approval, or certification of Defendant  
15 BidRack's goods or services;

16           (b) In violation of § 1770(a)(3) by misrepresenting the affiliation,  
17 connection, or association with, or certification by, third party news  
18 organizations and others in relation to Defendant BidRack's products;

19           (c) In violation of § 1770(a)(9) by advertising Defendant BidRack's goods  
20 or services with the intent not to sell them as advertised;

21           59. Plaintiff and the Classes relied upon Defendants' false and deceptive  
22 advertising described herein, including Defendants' fake blogs and testimonials, all of which  
23 conceal the actual price associated with use of the BidRack auction website.

24           60. As a result of Defendants' misrepresentations, Plaintiff and the Classes  
25 reasonably understood that they would not be charged any amount other than what was  
26 necessary to pay for the products they won at auction. Based upon that understanding,  
27  
28

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COMPLAINT

1 Plaintiff and the Classes submitted their confidential contact and payment information to  
2 BidRack.

3 61. Shortly thereafter, Defendant BidRack charged Plaintiff and members of the  
4 Classes unauthorized and undisclosed fees for initial "bid packs."

5 62. The injuries of which Plaintiff and members of the Classes complain are a  
6 direct and proximate result of Defendants' violations of law and wrongful conduct described  
7 herein.

8 63. Under Cal. Civ. Code § 1780(a) and (b), Plaintiff and the Classes seek  
9 injunctive relief requiring Defendants to cease and desist the illegal conduct alleged in this  
10 Complaint, and any other appropriate remedy for violations of the CLRA. For the sake of  
11 clarity, Plaintiff explicitly disclaims any claim for damages under the CLRA at this time.

12 **COUNT III**  
13 **Violation of California's Unfair Competition Law**  
14 **Cal. Bus. & Prof. §§ 17200, *et seq.***  
**(On Behalf of Plaintiff and the Classes)**

15 64. Plaintiff incorporates by reference the foregoing allegations.

16 65. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§  
17 17200, *et seq.*, protects both consumers and competitors by promoting fair competition in  
18 commercial markets for goods and services.

19 66. The UCL prohibits any unlawful, unfair or fraudulent business act or practice.  
20 A business practice need only meet one of the three criteria to be considered unfair  
21 competition. An unlawful business practice is anything that can properly be called a business  
22 practice and that at the same time is forbidden by law. A fraudulent business practice is one  
23 in which members of the public are likely to be deceived.

24 67. As alleged herein, Defendants' continued utilization of unlawful and  
25 unconscionable marketing practices, as well as Defendant BidRack's continuing practices of  
26 charging consumers credit and bank cards without authorization and "shill bidding" in its  
27



1 own auctions in order to inflate the winning price, constitute unlawful and unfair business  
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

3 68. In deceiving Plaintiff and the Classes by creating and supporting advertising  
4 that fails to clearly and conspicuously disclose the actual price of Defendant BidRack's  
5 services and products, and inducing Plaintiff and members of the Classes to proffer payment  
6 information based on that misrepresentation, Defendants have engaged in deceptive trade  
7 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

8 69. The price of a consumer product is a material term of any transaction because  
9 it is likely to affect a consumer's choice of, or conduct regarding, whether to purchase a  
10 product. Any deception related to the price of a consumer product is materially misleading.

11 70. Defendants' misrepresentation of the price of Defendant BidRack's products  
12 is likely to mislead a reasonable consumer who is acting reasonably under the circumstances.

13 71. Defendants have violated the "unfair" prong of the UCL in that their actions  
14 caused substantial injury to consumers by causing their credit cards to be charged without  
15 their consent after inducing them to submit their information through deceptive marketing.  
16 The injury caused by Defendants' conduct is not outweighed by any countervailing benefits  
17 to consumers or competition, and the injury is one that consumers themselves could not  
18 reasonably have avoided.

19 72. Defendants have also violated the "fraudulent" prong of the UCL in that their  
20 statements, advertisements, and representations regarding what consumers would be charged  
21 for Defendant BidRack's products are false and likely to deceive a reasonable consumer.  
22 Further Defendants' acts constitute fraud in the inducement and conspiracy to commit fraud  
23 in the inducement as detailed in Counts IV and V.

24 73. Defendants have violated the "unlawful" prong of the UCL in that  
25 Defendants' conduct violated the Consumer Legal Remedies Act (Cal. Bus. & Prof. Code §§  
26 1750, *et seq.*) and the False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*).  
27

75. Pursuant to Cal. Bus. & Prof. Code §§ 17203, Plaintiff seeks an order permanently enjoining Defendants from continuing to engage in unfair and unlawful conduct. Plaintiff seeks an order requiring Defendants to (1) immediately cease the unlawful practices alleged in this Complaint; (2) make full restitution of all funds wrongfully obtained; and (3) pay interest, attorneys' fees, and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

**COUNT IV**  
**Fraud in the Inducement**  
**(On Behalf of Plaintiff and the Classes)**

76. Plaintiff incorporates by reference the foregoing allegations.

77. As described with particularity herein, Defendants have disseminated, and continue to disseminate advertising that they know or should reasonably know is false and misleading. This conduct includes, but it is not limited to, promoting and advertising their products without disclosing the actual price, a material term of any transaction. Defendants actively misrepresent and obscure the actual price(s) consumers are charged when they submit their credit and debit card information.

78. Through a series of advertisements, representations, omissions, and false statements regarding the BidRack auction platform, Defendants acted in concert to obscure the actual price a consumer is charged to participate.

79. Defendant BidRack, in conjunction with John Doe Defendant and other ad networks, took concrete and intentional steps to misrepresent the actual price ultimately placed on the credit and debit cards of Class members.

80. Defendants intentionally made all representations of the actual price difficult to locate and/or read, by omitting the actual price charged consumers from its marketing materials.

1           81. Defendant BidRack and John Doe Defendant actively took part in optimizing  
2 the online bidding transaction pages so as to increase the rate of conversions (sales), and have  
3 full knowledge and visibility of the website content and each transaction, including  
4 knowledge of the concealed prices.

5           82. In furtherance of Defendants' fraudulent conduct, Defendant BidRack sends  
6 screenshots of their transaction pages to consumers and third parties such as the Better  
7 Business Bureau, and credit card companies, which misrepresent the appearance of those  
8 pages at the time consumers visited them.

9           83. BidRack's intentional provision to consumers and third parties such as the  
10 Better Business Bureau, and credit card companies of a page it created that materially differs  
11 from the page consumers actually viewed and acted upon is a fraudulent act or practice  
12 designed to deceive and defraud consumers that correctly state that BidRack did not clearly  
13 and conspicuously disclose the membership charge it crammed onto consumers' credit and  
14 bank statements when they registered for the auction site.

15           84. By committing the acts alleged in this Complaint, Defendants have knowingly  
16 disseminated untrue and/or misleading statements through fraudulent advertising in order to  
17 sell or induce members of the public to purchase "bid packs" on BidRack's online auction  
18 site.

19           85. The price of a consumer product is a material term of any transaction because  
20 it directly affects a consumer's choice of, or conduct regarding, whether to purchase a  
21 product. Any deception or fraud related to the price of a consumer product is materially  
22 misleading.

23           86. The misrepresentation or omission of the price of a product is likely to  
24 mislead a reasonable consumer who is acting reasonably under the circumstances.

25           87. Defendants knew or should have known of the falsity of the representations  
26 made regarding the online auctions they marketed.

89. Plaintiff and members of the Class and members of the Classes were all charged monies beyond what they authorized. Accordingly, Plaintiff and members of the Classes have suffered injury in fact and lost money in justifiable reliance on Defendants' misrepresentations and omissions of material fact.

90. In deceiving Plaintiff and the Classes by creating and supporting advertising that fails to clearly and conspicuously disclose the actual price of its products, and inducing Plaintiff and the Classes to proffer payment information based on that misrepresentation, Defendants have engaged in fraudulent practices designed to mislead and deceive consumers.

91. Plaintiff and the Classes have suffered harm as a proximate result of Defendants' violations of law and wrongful conduct.

92. In deceiving Plaintiff and members of the Classes by creating and supporting advertising that fails to clearly and conspicuously disclose the actual price of its products, and inducing Plaintiff and the Classes to proffer payment information based on that misrepresentation, Defendants have engaged in fraudulent practices designed to mislead and deceive consumers.

93. Plaintiff and members of the Classes have suffered harm as a proximate result of the violations of law and wrongful conduct of Defendants in the form of monies lost.

94. Plaintiff, on behalf of herself and the Classes, seeks damages for Defendants' unlawful conduct.

**COUNT V**  
**Conspiracy to Commit Fraud in the Inducement**  
**(On Behalf of Plaintiff and the Classes)**

95. Plaintiff incorporates by reference the foregoing allegations.

96. Defendants acted in concert as business partners and through a common enterprise to drive sales of online auction products, and cram consumers' credit and debit

1 card statements with unauthorized charges through fraudulent and deceptive marketing, as  
2 stated in Count IV of this Complaint. Defendants further conspired to deceive consumers  
3 regarding their ability to win and receive products through BidRack auctions.

4 97. As a fundamental part of their business relationship, Defendants acted to  
5 deceive consumers regarding the actual price of the online auction products, thereby inducing  
6 consumers to submit their credit and debit card information, on which the Defendant  
7 BidRack crammed unauthorized charges.

8 98. Defendants took overt acts in furtherance of their conspiracy across the nation,  
9 and specifically took overt acts in furtherance within this District. As alleged with  
10 particularity herein, Defendants formed contracts with each other, created deceptive  
11 marketing, advertisements, websites, and other solicitation materials to drive consumers to  
12 online auction transaction pages with knowledge that the marketing contained therein was  
13 false and misleading, and with the intent that the marketing taken as a whole would be relied  
14 on by consumers. Defendants, working together, and working with non-defendant affiliate  
15 marketers and publishers, formed a mutually beneficial network of deceptive and misleading  
16 marketing designed to induce consumers to submit a credit or bank card number for the  
17 purchase of an online auction "membership."

18 99. Any single Defendant, acting alone, would be unable to accomplish the level  
19 of deception and misrepresentations accomplished by Defendants acting together. The  
20 combination of their joint deception reinforces the appearance of legitimacy presented to  
21 consumers, thereby increasing the likelihood of a consumer submitting their credit or bank  
22 card number.

23 100. Plaintiff and the Classes have suffered harm in the form of monetary damages  
24 as a proximate result of the conspiracy and violations of law carried out by Defendants.

25 101. Plaintiff, on behalf of herself and the Classes, seeks damages for Defendants'  
26 unlawful conduct.

**COUNT VI**  
**Breach of Contract**  
**(On Behalf of Plaintiff and the BidRack Class)**

102. Plaintiff incorporates by reference the foregoing allegations.

103. In reliance upon Defendants' misrepresentations and deceptive advertising, Plaintiff entered into a contract to register an account for free with Defendant BidRack by giving her personal contact information and a credit card to be used for future purchases. A material inducement and term of the contract was Defendant's representation that the registration process was free.

104. Because of the deceptive misrepresentations stated in this Complaint, Plaintiff and the Class entered their credit card information with the understanding that they would only be charged at a future time when they chose to purchase bids from BidRack.

105. By cramming additional charges onto the debit and credit cards of Plaintiff and members of the Class, Defendant BidRack breached the contract to register an account for free. Plaintiff and members of the Class did not assent to any charges during the registration process, and did not reasonably expect that the registration contract would incur a fee.

106. At all times relevant to this action, Defendant BidRack acted willfully and with intent to breach the contracts entered into with Plaintiff and the Class.

107. Plaintiff and the Class have suffered damages as a direct result of BidRack's acts and practices in the form of monies paid and lost.

108. Plaintiff, on her own behalf, and on behalf of the Class, seeks damages for Defendant BidRack's breach of contract, as well as interest and attorneys' fees and costs.

**COUNT VII**  
**Restitution/Unjust Enrichment**  
*(in the alternative to breach of contract)*  
**(On Behalf of Plaintiff and the Classes)**

109. Plaintiff incorporates by reference the foregoing allegations, excluding paragraphs 102-108.

110. Plaintiff and members of the Classes conferred a monetary benefit on Defendants. Defendants have received and retained money belonging to Plaintiff and the Classes as a result of the substantial and unauthorized charges Defendant BidRack placed on their credit and debit card bills. Defendants profited from each initial "bid pack" purchase made by a consumer after being directed to the BidRack transaction pages.

111. Defendants appreciate or have knowledge of such benefit.

112. Under principles of equity and good conscience, Defendants should not be permitted to retain the money belonging to Plaintiff and members of the Classes, which Defendants have unjustly received as a result of their unlawful actions.

113. Plaintiff and other members of the Class suffered damages as a direct result of Defendants' conduct.

114. Plaintiff, on behalf of herself and the Classes, seek restitution for Defendants' unlawful conduct.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff Verna Parino, individually and on behalf of the Classes, requests that the Court enter an Order providing for the following relief:

- A. Certify this case as a class action on behalf of the Classes defined above, appoint Plaintiff as class representative, and appoint her counsel as class counsel;
- B. Declare that Defendants' actions, as set out above, violate Cal. Bus. & Prof. Code §§ 17500 *et seq.*, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, Cal. Civ. Code §§ 1750 *et seq.*, and constitute fraud in the inducement, conspiracy to commit fraud in the inducement, breach of contract, and unjust enrichment;
- C. Award all economic, monetary, actual, consequential, statutory and compensatory damages caused by Defendants' conduct, and if their conduct is proven to be willful, award Plaintiff and the Classes exemplary damages;



- 1 D. Award restitution against Defendants for all money to which Plaintiff and the  
2 Classes are entitled in equity;
- 3 E. Award Plaintiff and the Classes their reasonable litigation expenses and  
4 attorneys' fees;
- 5 F. Award Plaintiff and the Classes pre- and post-judgment interest, to the extent  
6 allowable;
- 7 G. Enter injunctive and/or declaratory relief as is necessary to protect the  
8 interests of Plaintiff and the Classes; and
- 9 H. Award such other and further relief as equity and justice may require.

10 **JURY TRIAL**

11 Plaintiff demands a trial by jury for all issues so triable.

12  
13 Respectfully submitted,

14  
15 Dated: June 24, 2011

16 **VERNA PARINO**, individually and on behalf  
17 of all others similarly situated,

18 By:  \_\_\_\_\_

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24 \*pro hac vice application to be filed  
25  
26  
27  
28

COMPLAINT